

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4926 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

KANJIBHAI VALJIBHAI BHOJ

Versus

GUJARAT STATE CIVIL SUPPLIES CORP.LTD

Appearance:

MR NM KAPADIA for Petitioners

MR DEEPAK V PATEL for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 29/10/1999

ORAL JUDGEMENT

Admit. Mr DV Patel, learned advocate waives
sevice on behalf of the respondents.

The appellants, who are the original-defendants
in the suit being Special Civil Suit No. 144/90, have
challenged the judgment and decree passed by the learned
Civil Judge (SD) Surat, dated 7.4.98, whereby the learned
trial judge allowed the suit filed by the

respondent-plaintiff, granted a decree of Rs. 38,114/ together with interest at the rate of 12% from 1.7.87 to 28.2.90.

The judgment and order has been challenged on the ground that it violates the principles of natural justice inasmuch as no opportunity was given to the appellants to cross examine PWS and to produce the documentary evidence. Since this is the only question which is to be decided in this appeal, it is not necessary to narrate pleadings of the parties. From the proceedings of the trial court, it appears that on 13.11.92 the appellants appeared and filed written statement Exh. 10. On 7.8.95 issues were framed. On 5.1.1998, one Joseph Thomson Christian was examined as plaintiff witness at Exh. 24. The examination-in-chief of the said witness was over on 5.1.1998. The trial court, it appears that, closed the right of the appellants to cross-examine the said witness on that ground that the appellants were not present before the Court on that day. It further appears that the appellants preferred an application Ex. 37 praying inter alia that their right to cross-examine the said witness Exh. 24 be opened, so that their defence may not be prejudiced. On 12.2.1998, the said application was rejected. The appellants, vide Exh. 39 produced important documents. It may be stated that in the application exh. 37, the appellants have contended that their advocate Mr. AM Parmar on his being elected MLA of the Surat constituency, stopped attending the work in the court and his associate advocate Mr. Navin Patel informed the appellants that as and when their presence is required, they will be informed accordingly. The appellants, therefore, could not remain present when plaintiff witness Exh. 24 was examined. Not only that, the appellant no. 2 was transferred from another place and, therefore, he was not aware of the court proceedings and its progress. It is not in dispute that the appellants have challenged the order passed below ex. 37 by filing Civil Revision Application No. 431/98 before this Court for quashing and setting aside the order passed below Exh. 37 and requested this Court to permit the appellants to cross-examine the witness examined by the respondent-plaintiff. This revision application was preferred in the month of February, 1998. In the application Exh. 39, the appellants have inter alia stated that they have engaged new advocate and they wanted to produce certain evidence relating to the suit vide separate list, correctness whereof cannot be doubted. The learned trial judge, it appears, rejected even that application on 12.2.1998 by passing the following order:

"To prolong the matter, plaintiff's deposition is over. Right of cross examination is closed and the matter has been fixed for further evidence and if court will permit this type of practice then in Surat, impossible to deliver judgment on merits. Hence, the application for production is rejected."

Against the said order below application Exh. 39, the appellants have also filed another revision being Civil Revision Application No. 608/98 and challenged the said order for quashing and setting aside the same. Thereafter, on 13.2.98, PW-2 was examined and the matter was fixed for further evidence of the plaintiff. On 7.3.98, this Court issued notice in the revision application making it returnable on 6.4.98. IN the meantime, the trial court has fixed the hearing on 18.3.98 for further hearing, however, the same was adjourned to 23.3.98 for further evidence. On 23.3.98, the appellants, in fact, applied for adjournment on the ground that he has already moved the High Court by filing revision application, however, the same was rejected. No witnesses were examined on 23.3.98 and the matter was adjourned to 24.3.98 and again plaintiff's advocate sought time. Thus, the matter was kept on 25.3.98. On 25.3.98, it appears that again appellants' advocate applied for time which was rejected, not only that, even the application of the plaintiff to call another witnesses was also rejected. Again on 1.4.98, another application of the plaintiff to produce more witnesses was rejected and the matter was fixed for arguments. The appellant again requested the court that the hearing of the civil revision application was fixed on 7.4.98 and, therefore, he sought time on that ground, however, the same was rejected. On 3.4.98, one more attempt was made by the appellants and sought time on the ground that the hearing of the civil revision application was fixed on 7.4.98 and all the papers are sent to the advocate of High Court, and, therefore, some time may be granted. That request was also rejected on the ground that this court has not granted stay of further proceedings. On 4.4.98, the suit was kept for order. On 6.4.98, this Court in Civil Revision Application No. 431/98 passed the following order:

'Despite of facts, none appears for respondents, adjourned to 22.6.98. Meanwhile, however, proceedings of the trial court are stayed till then."

It is the case of the appellants that even though this Court has passed the order staying further proceedings, and since stay was not served on the next date i.e. on 7.4.98, the trial court allowed the suit and passed the decree in favour of the respondent-plaintiff. It may be stated that on 7.4.98, this Court in second Civil Revision Application also issued notice and made it returnable on 22.4.98. In spite of the order of this Court staying further proceedings of the trial court, the trial court on 7.4.98 passed final judgment and decree, therefore, naturally both the civil revision applications become infructuous, and therefore, this Court on 27.4.98 passed the order to the effect that the civil revision applications have become infructuous since the suit is disposed of.

In view of the aforesaid facts, it appears that the trial court has acted in undue haste in disposing of the suit even though it is clear that the appellants were not properly represented by their advocate. Since the trial court has not permitted the appellants to cross-examine the witness at Exh. 24, the entire proceedings has resulted into miscarriage of justice. Since the learned advocate who was representing the appellants has become MLA, there was no representative of the appellants in the Court. It is too much to accept that the appellants' side remained present on all the date. The appellants, on the contrary on the earliest point of time, made a request to re-call the witness for cross-examination. The learned trial judge could have considered the just and valid request of the appellants. Apart from that, there is also no justification for rejecting another application Exh. 39 to produce the documents. In view of above, and especially when this Court has found substance in the grievance of the appellants, not only entertained both the revisions, but has also granted stay of further proceedings, with a view to see that the appellants should get proper justice. In view of this, in my opinion, the appellants have in fact, made out a case for remand.

In the result, this appeal is allowed. The judgment and decree dated 7.4.98 passed by the trial court is set aside. The matter is remanded back to the trial court with a direction to permit the appellants to cross-examine the PW-1 Exh. 24, and other witnesses, if any examined, thereafter. The trial court shall also permit the appellants to produce the documents vide Exh. 39. This indulgence is shown to the appellants with a clear understanding that the appellants shall co-operate with the early disposal of the suit and will not seek any

unnecessary adjournments. The trial court shall proceed to decide the suit from the stage where the appellants were prevented from cross-examining. In view of the fact that the matter has been delayed unnecessarily, the trial court shall make all endeavour to see that the suit is disposed of as early as possible and in any case, not later than 30.12.99. The appeal is accordingly allowed with no order as to costs.

mandora/